IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 27TH MARCH 2007 / 6TH CHAITHRA 1929

Crl.MC.No. 972 of 2007()

ST.2552/2004 of JUDL. MAGISTRATE OF FIRST CLASS COURT, PATTAMBI

.....

PETITIONER:

CHANDRAN, PANIKKATHU VEEDU
EDAPPALAM DESOM, OTTAPALAM,
PALAKKAD.

BY ADV. SRI.P.V.JYOTHI PRASAD

RESPONDENTS:

---

1. STATE OF KERALA, REP. BY PUBLIC
PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

2. K.V. PURUSHOTHAMAN, AARANCHEERI VEEDU
PUTHENCHIRA, IRINJALAKUDA,
THRISSUR 680 682, NOW RESIDING AT
POST BOX 40670, DOHA, QUATHAR, A.G.

R1 BY PUBLIC PROSECUTOR SRI.GIKKU JACOB

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 27/03/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

- -

Crl.M.C.No. 972 of 2007

- -

Dated this the 27th day of March, 2007

O R D E R

The petitioner is the complainant in a prosecution under Section 138 of the N.I. Act. The accused, it would appear, has taken up a defence that the signature in the cheque in question is not his. The accused had filed an application earlier to send the disputed cheque to the expert. The learned Magistrate, by Annex. A1 order dt.1.10.2005, had allowed the said request with the following specific observation:

> "Hence I am of the view that to avoid such an apprehension the accused/petitioner has to produce admitted documents of the year 2002 for comparison with the signature available in Ext.P1 cheque.

2. Long later, another application appears to have been filed for identical purpose. The learned Magistrate, by Anex.A2 order, had allowed the application filed by the petitioner and called upon the Federal Bank, Kodungallur to forward to the court the admitted signatures of the accused. The learned Magistrate proceeded to observe as follows:

> "I am satisfied that the documents mentioned in the petition are sufficient to send for expert's opinion."

3. There was a request on the side of the petitioner/complainant that the original passport of the accused may be sent to the expert for comparison. The learned Magistrate was of the opinion that if the original passport is called for, that may cause much hardship to the accused. Hence the petition was allowed and direction was issued to issue summons to the Bank to produce the documents referred to in the petition.

4. That petition has been read over to me. It shows that the accused had requested that the bank be directed to produce the specimen signature (original) and the original of the cheques issued by the petitioner for operation of the said account etc.

4. The short apprehension of the petitioner/complainant is that the learned Magistrate may not insist on production of standard signature of the year 2002. The petitioner has a case that the specimen signature card is not acceptable and that the specimen signature had been changed subsequent to 2002. The short contention of the petitioner is that the learned Magistrate must insist that whatever admitted documents come from the Bank must relate to 2002 and earlier period.

5. I have no reason to assume that the learned Magistrate, in the light of Annex.A1 order, will not insist on undisputed documents of 2002 or

earlier years to facilitate comparison with the disputed signature in the cheque in question. The learned Magistrate, in the light of Annex.A1 order, must certainly insist on such undisputed documents of 2002 or earlier years. I find no reason to assume that the learned Magistrate, in view of Annexs.A1 and A2, will not insist on production of such admitted documents of 2002 and earlier years. The learned Magistrate must do the same.

6. In the nature of the contentions raised in this petition and the nature of the order that I propose to pass, I am satisfied that it is not necessary to wait for issue and return of notice to the respondent.

7. This Crl.M.C. is accordingly allowed in part. It is observed that consistent with Annex.A1 order, the learned Magistrate must insist on forwarding of undisputed documents of the year 2002 and earlier years when the cheque is sent to the expert for comparison.

8. Hand over copy of the order to the learned counsel for the petitioner for production before the learned Magistrate.

(R. BASANT)
Judge

tm

tm